

Property: Ft. Myers Beach (5273)  
Prepared by: LJ

### **SIXTH AMENDMENT TO OFFICE LEASE**

THIS SIXTH AMENDMENT TO OFFICE LEASE (this "Amendment") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between FIRST STATES INVESTORS 5200, LLC, a Delaware limited liability company ("Landlord") and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation ("Tenant").

### **BACKGROUND**

A. Landlord and Tenant are parties to that certain Office Lease dated as of January 13, 1998, as amended by that certain Lease Renewal and Extension Agreement dated as of February 7, 2000, that certain letter agreement dated February 5, 2001, that certain Lease Renewal and Extension Agreement dated as of June 25, 2002, that certain Lease Renewal and Extension Agreement dated as of February 13, 2003, and that certain Fifth Amendment to Office Lease dated as of June 1, 2005 (collectively, as so amended, the "Lease"), wherein Landlord leased to Tenant an aggregate of approximately 6,815 rentable square feet of space including Suite 101 containing approximately 2,907 rentable square feet and Suite 210, containing approximately 3,908 rentable square feet (the "Leased Premises"), in the building located at 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 (the "Building").

B. Landlord and Tenant desire to further amend the Lease as set forth below.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, each intending to be legally bound, hereby agree to amend, and do hereby amend, the Lease as follows:

1. Capitalized Terms. Except as specifically defined in this Amendment, capitalized terms shall have the same meanings given to such term in the Lease.

2. Correction of Landlord Name. The Fifth Amendment to Lease dated as of June 1, 2005 incorrectly named First States Investors 5000A, LLC as Landlord, successor in interest to Bank of America, N.A.. The Lease is hereby amended to correct the Landlord's name to read First States Investors 5200, LLC. Landlord and Tenant acknowledge and agree to such change and to confirm and ratify that other than the correction to the Landlord's name, and the other modifications below, the Lease remains in full force and effect.

3. Lease Renewal. The Lease expired on June 30, 2010, but Tenant has remained in occupancy of the Leased Premises. Landlord and Tenant hereby agree to convert Tenant's occupancy from a tenant at sufferance under Section 2.5 of the Lease to be governed by the terms of the Lease as further amended by this Amendment. Landlord and Tenant agree to renew the Lease for an additional period of three (3) years, commencing as of August 1, 2010 and expiring on July 31, 2013 (the "Renewal Term"). Except as expressly set forth herein, all of the terms and conditions of the Lease shall apply to the Renewal Term.

4. Condition of Leased Premises. Tenant accepts the Leased Premises in its "AS-IS" "WHERE-IS" condition and Landlord shall not be required to perform any tenant finish or other work to the Leased Premises, the base Building or Building systems, nor to provide Tenant any tenant finish allowance or other allowance or inducement in connection with the parties agreement to renew, except that Landlord, at no additional cost to Tenant, will replace the roof of the Building in 2011 (the "Work"). Landlord shall use commercially reasonable efforts to complete the Work in a timely manner, but Landlord shall not be liable for any claims or damages for any delays in completion of the Work. Landlord's obligation hereunder is limited to the completion of the Work specified in this paragraph 4. Landlord shall not be required to furnish, construct or install any other items or perform any other work not described herein. Tenant acknowledges that the Work may involve noise, dust, odors and general inconvenience and Landlord shall have no liability for claims from Tenant in connection therewith.

5. Base Rent/NSF Charge. The Base Rent payable by Tenant to Landlord during the Renewal Term shall be as follows:

<b>Beginning</b>	<b>Ending</b>	<b>Base Rent/RSF (rounded)</b>	<b>Monthly*</b>	<b>Annual*</b>
8/1/10	7/31/11	\$15.85	\$9,003.06	\$108,036.72
8/1/11	7/31/12	\$16.33	\$9,273.15	\$111,277.80
8/1/12	7/31/13	\$16.82	\$9,551.34	\$114,616.08

\*plus any applicable Florida sales taxes and local surcharges

If Landlord receives a check from Tenant that is dishonored by Tenant's bank, then, in addition to any late fees due in accordance with Section 2.3 of the Lease, Tenant shall pay to Landlord any bank service charges resulting from dishonored checks, plus a \$25.00 processing fee.

6. Janitorial. During the Renewal Term and continuing until the expiration or earlier termination of the Lease (as modified herein), Tenant, at Tenant's sole cost and expense, shall arrange for janitorial services to the Leased Premises to maintain the Leased Premises in broom-clean, sanitary condition, free of infestation by rodents or insects of any nature throughout the Term. If Tenant requests by written notice that Landlord arrange for janitorial services to the Leased Premises, then the cost of such services shall be payable by Tenant to Landlord as additional rent pursuant to the terms of the Lease.

7. Signage Tenant, at its sole cost and expense, shall be entitled to erect a monument sign on the Estero Boulevard frontage of the Property, subject to the provisions of this Paragraph 6, and further provided that Tenant shall not install such signage until such time as Tenant has received Landlord's written approval with respect to the design (including size and lettering) and location of such signage. All signs must be in conformity with all laws, ordinances, regulations, and restrictions, of any kind or nature relating to such signage. The permitted monument sign shall, at the sole cost and expense of Tenant, be maintained and repaired in first-class condition by Tenant and must provide for space for at least one (1) other tenant in the Building.

8. Renewal Option(s). Landlord hereby grants to Tenant the options to renew in accordance with the provisions of the Renewal Option Rider attached here to as Exhibit A and made a part hereof. Tenant acknowledges and agrees that all prior renewal rights in the Lease are null and void and of no further force and effect and are hereby deemed to be deleted from the Lease.

9. Right of First Option to Purchase the Property. Landlord hereby grants to Tenant the right of first offer to purchase the Property in accordance with the provisions of the Right of First Offer (Purchase) Rider attached hereto as Exhibit B and made a part hereof.

10. Notices. Notices to Landlord under the Lease shall hereinafter be sent as follows:

First States Investors 5200, LLC  
610 Old York Road, Suite 300  
Jenkintown, PA 19046  
Attn: Lease Administration

With a required copy to:

First States Investors 5200, LLC  
c/o Gramercy Capital Corp.  
420 Lexington Avenue, 19<sup>th</sup> Floor  
New York, NY 10170  
Attn: Gramercy Realty General Counsel

11. Broker Indemnification. As part of the consideration for the granting of this Amendment, the parties hereto represent and warrant to one another that no broker or agent engaged or contacted by Landlord or Tenant either negotiated or was instrumental in negotiating or consummating this Amendment, except for Jones Lang LaSalle (the "Landlord Broker"). Landlord and Tenant each hereby agree to indemnify one another against any loss, expense (including reasonable attorneys' fees and costs), cost or liability incurred by a party as a result of a claim by any broker or finder, claiming by or through such indemnifying party. Landlord shall pay Landlord Broker a commission pursuant to a separate agreement between Landlord and Landlord Broker.

12. Entire Agreement. This Amendment together with the Lease sets forth all covenants, agreements and understandings between Landlord and Tenant with respect to the Leased Premises, and there are no other covenants, conditions or understandings, either written or oral, between the parties hereto except as set forth in the Lease as further modified by this Amendment. In the event there is any ambiguity or inconsistency between the terms and conditions of the original lease and the amendments thereto, the most recent amendment shall control.

13. Full Force and Effect. Except as expressly amended hereby, all other terms and provisions of the Lease remain unchanged and continue to be in full force and effect.

14. Compliance with Warranties, No Default. The representations and warranties set forth in the Lease as amended hereby shall be true and correct with the same effect as if made on the date of this Amendment, and no uncured default under the Lease has occurred or is continuing on the date of this Amendment.

15. Conflicts. The terms of this Amendment shall control over any conflict between the terms of the Lease and the terms of this Amendment.

16. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17. Counterparts. This Amendment may be executed in multiple counterparts, and each counterpart when fully executed and delivered shall constitute an original instrument, and all such multiple counterparts shall constitute but one and the same instrument.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, Landlord and Tenant cause this Amendment to be duly executed as of the date and year first above written.

**LANDLORD:**

Witnesses: FIRST STATES INVESTORS 5200, LLC,  
a Delaware limited liability company

\_\_\_\_\_  
Name: By: \_\_\_\_\_  
Name: Jarrett Wells  
Title: Vice President

\_\_\_\_\_  
Name:

**TENANT:**

Witnesses: TOWN OF FORT MYERS BEACH,  
a Florida municipal corporation

\_\_\_\_\_  
Name: By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:

**EXHIBIT A**  
**Renewal Option Rider**

The following provisions are hereby added to the terms of this Amendment. In the event of a conflict between the terms of this Rider and the terms of the Lease as amended by the Amendment, the terms of this Rider shall control. Unless otherwise defined in this Rider, each capitalized term used in this Rider shall have the meaning assigned to it in the Lease as amended by this Amendment. As hereinafter used in this Rider, the term "this Lease" or "the Lease" shall mean the Lease, as modified by this Amendment and this Rider.

1. Provided the Lease is still in full force and effect and there is no uncured event of default by Tenant under the Lease beyond any applicable cure period, Tenant shall have the right and option to renew the Lease for one (1) additional two (2) year period (the "Renewal Term"), on the following terms and conditions.
2. Tenant shall pay the following Base Rent to Landlord during the Renewal Term in accordance with the provisions of the Lease:

<b>Beginning</b>	<b>Ending</b>	<b>Base Rent/RSF (rounded)</b>	<b>Monthly</b>	<b>Annual</b>
8/1/13	7/31/14	\$17.32	\$9,837.88	\$118,054.56
8/1/14	7/31/15	\$17.84	\$10,133.02	\$121,596.24

3. Tenant shall exercise its right and option to renew this Lease by giving Landlord written notice no later than six (6) months prior to the expiration of the initial term. If Landlord does not receive such notice by such deadline, Tenant shall be deemed to have elected not to exercise such renewal option.
4. The leasing of the Premises by Landlord to Tenant during the Renewal Term shall be upon all terms and conditions set forth in the Lease, except as expressly modified by this Rider, and except that upon exercise of the Renewal Term, Tenant shall have no further rights to renew the Lease. Tenant, if requested by Landlord, agrees to execute a new lease for the Renewal Term on the same terms and conditions set forth in this Lease, except (a) as modified with respect to the Base Rent in accordance with the terms of this Rider, (b) that Tenant shall accept the Leased Premises in its then "AS-IS" condition, and (c) that Landlord shall not be required to perform any tenant finish or other work to the Leased Premises, nor to provide Tenant any tenant finish allowance or other allowance or inducement with respect to the Leased Premises. At Landlord's request, instead of executing a new lease, as set forth above, the parties may execute an amendment to the Lease, in form and substance acceptable to the parties, reflecting the leasing of the Leased Premises for the Renewal Term in accordance with the foregoing.
5. If Tenant fails to properly exercise this renewal option, Tenant shall have no right to extend the term of this Lease. The renewal option granted herein is personal to the Tenant named in this Lease and may not be transferred or assigned except in connection with an assignment of the Lease approved by Landlord in accordance with the provisions of this Lease.

**EXHIBIT B**  
**Right of First Offer to Purchase Rider**

The following provisions are hereby added to the terms of this Amendment. In the event of a conflict between the terms of this Rider and the terms of the Lease as amended by the Amendment, the terms of this Rider shall control. Unless otherwise defined in this Rider, each capitalized term used in this Rider shall have the meaning assigned to it in the Lease as amended by this Amendment. As hereinafter used in this Rider, the term "this Lease" or "the Lease" shall mean the Lease, as modified by this Amendment and this Rider.

1. Grant of Right. Landlord hereby grants to Tenant a right of first offer to purchase the Property ("Right of First Offer to Purchase") on the terms set forth in this Rider; provided, however, that Tenant is not then in default under this Lease at the time Tenant exercises such Right of First Offer to Purchase and at the closing of the sale of the Property to Tenant.

2. Exercise of Right of First Offer to Purchase. If during the Renewal Term or any additional extension of the Lease, Landlord desires to sell or convey the Property to a third party (other than a third party with Superior Purchase Rights (as defined below)), Landlord shall notify Tenant in writing ("Landlord's Purchase Notice"), which Landlord's Purchase Notice shall specify the purchase price and include a form of agreement of sale upon which Landlord is willing to sell the Property. If Tenant desires to purchase the Property at the purchase price and upon the terms and conditions set forth in Landlord's Purchase Notice and the agreement of sale, Tenant shall, within fifteen (15) business days following receipt of Landlord's Purchase Notice, notify Landlord in writing that Tenant will purchase the Property ("Tenant's Purchase Notice") and Tenant shall pay to Landlord, together with Tenant's Purchase Notice, a deposit in an amount equal to ten (10%) percent of the purchase price for the Property ("Deposit"). Upon receipt by Landlord of Tenant's Purchase Notice and the Deposit, Landlord shall be deemed to have agreed to sell the Property to Tenant, and Tenant shall be deemed to have agreed to purchase the Property from Landlord for the purchase price and upon the terms and conditions set forth in Landlord's Purchase Notice and the agreement of sale. If requested by Landlord or Tenant in writing, within five (5) days of such request Landlord and Tenant shall execute an agreement of sale in substantially the form provided by Landlord to Tenant with Landlord's Purchase Notice. If Tenant does not timely send Tenant's Purchase Notice, at any time thereafter Landlord shall be free to sell and convey the Property free and clear of this Right of First Offer to Purchase, provided that (i) Landlord shall not sell the Property for a purchase price that is less than ninety (90%) percent of the purchase price stated in the Landlord's Purchase Notice or (ii) enter into an agreement of sale to sell the Property more than one (1) year following the date of Landlord's Purchase Notice without, in each case, sending a new Landlord's Purchase Notice to Tenant, in which event Tenant shall have a further period of ten (10) days following Tenant's receipt of the new Landlord's Purchase Notice to agree to purchase the Property.

3. Personal to Tenant. The Right of First Offer to Purchase granted to Tenant herein is personal to the Tenant named in this Lease and shall not inure to any subtenant and may not be transferred or assigned except in connection with an assignment of the Lease approved by Landlord in accordance with the provisions of this Lease.

4. Subject and Subordination. Tenant hereby acknowledges and agrees that the Right of First Offer to Purchase is (i) subject and subordinate to any and all rights of any

mortgagee of Landlord and (ii) shall not apply in the event Landlord transfers the Property to any affiliate of Landlord (collectively, the "Superior Purchase Rights").

5. Limitations. Notwithstanding the foregoing, if Landlord desires to sell or convey the Property together with one or more other properties owned by Landlord and/or any affiliates of Landlord, Landlord's Purchase Notice merely shall state that Landlord so intends to sell the Property as part of a multi-property transaction, without specifying the purchase price or other general terms and conditions upon which Landlord might be willing to sell the Property or any other property to Tenant, and Tenant shall have no right to purchase the Property (and Landlord shall have no obligation to sell the Property to Tenant) unless, within ten (10) days following Tenant's receipt of such Landlord's Purchase Notice, Landlord and Tenant shall in writing agree that the Property shall be sold to Tenant on terms and conditions mutually acceptable to both parties.